

CHAMPAIGN CONTROLLED CHOICE PLAN MEMORANDUM OF UNDERSTANDING

1. This Memorandum of Understanding summarizes an interim settlement of civil rights issues relating to student assignment and affecting the African American students of Champaign Community Unit School District.¹ The parties to this Agreement are:

- a. The Champaign Community Unit School District No. 4, Champaign County ("District"); and
- b. The named Plaintiffs,² as representatives of the settlement class of present and future African American students ("Plaintiff Class" or "Plaintiffs"), by Futterman and Howard, Chtd., their legal counsel.

In consideration of the Agreements and promises summarized herein, the sufficiency of which is hereby acknowledged, the District and Plaintiff Class agree as follows.

Background

2. In May and July 1996, the Plaintiffs initiated complaints with the United States Department of Education, Office of Civil Rights ("OCR"). The initial complaints addressed the mandatory one way busing of African American students and the educational services provided to those students.

3. In August 1996, OCR initiated a pro-active compliance review of minority³ over-representation in Special Education and under-representation in upper level courses. In October 1996, Plaintiffs amended their complaint to allege systemwide discrimination in student assignment and other issues.

4. As a result of the complaints and compliance review, the District and attorneys for the Plaintiff Class met on several occasions to discuss the issues raised in the complaints. Through the complaints and during the discussions, Plaintiffs notified the District that they believed that civil rights of African American students were violated by discriminatory

¹Other civil rights issues including educational equity and staff hiring and assignment practices remain and may be addressed in future Agreements or through litigation.

²For a complete listing of named Plaintiffs, see page 11 of this Memorandum.

³In this Agreement minority means African American.

practices including but not limited to the following characteristics of the current (1995-97) and past (1968-1995) student assignment system:

- a. racial identifiability of Columbia Elementary School;
- b. the disproportionate transportation burdens placed on African American students to achieve desegregation in other District schools; and
- c. the asserted "structural displacement" of students who reside in the predominately African American area in north Champaign, caused by insufficient building capacity that area.

5. In November 1996, after several months of study and community input, the District adopted a Redistricting Plan which provided for five schools of choice. The Plan encouraged but did not require racial diversity in school enrollments. The District projected that five schools under the plan would be racially identifiable white schools. The Plan also created a racially identifiable black school. The District stated that it intended to develop additional measures to address racial and economic diversity at a future time.

6. Plaintiffs contend that the Redistricting Plan addressed in part but did not fully resolve Plaintiffs' student assignment complaints. As a result, Plaintiffs notified the District that they were contemplating the commencement of class action litigation against the District, among other issues, challenging the current (1995-97) and past (1968-1995) student assignment system and the Redistricting Plan under the following legal theories:

- a. the Equal Protection Clause of the United States Constitution;
- b. 42 U.S.C. §1981;
- c. Title VI of the Civil Rights Act of 1964; and
- d. The Regulations promulgated under Title VI, 34 C.F.R. §100.3.

7. The District and Plaintiffs concur that the past and current (1968-1997) student assignment system disparately affects African American students and that remedial action is necessary. Furthermore, the Parties agree with respect to the current student assignment system that there are alternative student assignment practices which are of at least comparable soundness and which would not have the disparate impact caused by the present practices.

Controlled Choice

8. Plaintiffs suggested that the District adopt a controlled choice plan containing both elements of choice and administrative procedures to insure diversity, address educational equity, and promote school reform.

9. The District and Plaintiffs agree to adopt a controlled choice open enrollment system ("Controlled Choice Plan" or "Plan") which contains the following elements. The parties agree that the joint consultant team of Robert Peterkin and Michael Alves will be retained to develop the Plan based on these elements and based on extensive community consultation and input.

- a. guarantees racial diversity, provides individual choice regarding school enrollment within racial fairness guidelines, and promotes school reform;
- b. promotes school improvement by identifying, through parent choices, schools needing reform;
- c. includes specific criteria and mechanisms to identify and improve underchosen schools;
- d. encourages stability and continuity by permitting each student currently enrolled to remain in the student's current school until completing the highest grade of the school;
- e. applies each year to all students who need or request a new school assignment;
- f. insures equitable access and burdens by allocating the District's total basic school capacity to each part of the city in proportion to the number of students who reside there;⁴
- g. provides educational opportunities for individual students by permitting each student to choose, from a number of schools in the system, two or more schools that the student desires to attend, and to rank the schools by personal preference. The Parties agree that the decision to either allow students to choose from all schools in the system or to divide the District into two racially comparable geographic zones from which

⁴The Parties agree that further discussion is needed to address this element of the Plan. This Agreement in itself neither requires the District to add school capacity north of University Avenue nor relieves the District from doing so.

students can choose schools will be decided by the parties with the controlled choice consultants described in Paragraph 14, infra;

Racial Fairness Guidelines

- h. guarantees access for and diversity of racial groups by containing racial fairness guidelines for each grade level. The Plan may also control for other factors such as socio-economic background;
- i. allocates and reserves seats available at each school according to the systemwide proportions of (1) African American students and (2) all other students;
- j. contains a flexibility range of a maximum of plus or minus 15% of those systemwide racial compositions to accommodate schools which are overchosen by one group and underchosen by another. The overchoosing group may exceed its fair share proportion within this range. Systemwide racial composition and the applicable flexibility range shall be determined independently for elementary, middle, and high schools;
- k. assures that (through methods identified in the Plan) magnet schools located in the minority community enroll African American students at a minimum in proportion to their systemwide enrollment⁵
- l. implement Controlled Choice at middle and high school levels, while assuring that the change from a mandatory assignment system to Controlled Choice preserves at least the current level of racial similarity among these schools.

Preferences and Priorities

- m. may contain a sibling preference which provides a first preference, within racial fairness guidelines, to all students who have a brother or sister already attending the student's school of choice;
- n. contains a neighborhood preference which provides a preference within racial fairness guidelines to students who can walk to their chosen school;

Parent Information Centers

- o. creates one or more Parent Information Centers with sufficient resources to perform the day-to-day operations of the Plan and provide outreach,

⁵ Treatment under the Plan of gifted and other partial site programs, including measures to increase minority enrollment, will be addressed through the consultants, the Planning and Implementation Committee, and the Board.

information, and advocacy to parents. The Parent Information center(s) shall be located and conducted in a manner which maximizes minority parent participation in the Controlled Choice process;

Application and Assignment

- p. requires all eligible students to fill out an application indicating a minimum of two schools of choice. Every effort will be made to insure that minority students are aware of and participate in the application process;
- q. addresses over-chosen schools by conducting a lottery after all students with preferences who meet the racial fairness guidelines have been assigned;
- r. places unsuccessful students on a waiting list for their first choice and assigns them to their next available choice;
- s. administratively assigns students who do not file application forms or cannot be assigned to a school of choice to a school in which instructional space is available. A goal of the Plan is to minimize the number of students who are administratively assigned, within racial fairness guidelines;
- t. assures that students who are assigned to a school may remain at that school until the course of study offered has been completed;
- u. provides that students who do not receive their first choice may apply to transfer the following year in accordance with the controlled choice assignment process;

Magnet Schools

- v. initially establishes Washington, Columbia, and Kenwood as full-site magnet schools. The Controlled Choice Plan does not require that all schools have magnet themes before implementation. However, magnet themes and other choice inducing school improvements strongly promote the success of the Plan and increase the number of students receiving their first choice;
- w. requires that all magnet and other educational choice programs are school-wide and appropriate for heterogeneous student populations to assure within-school integration. Admission to magnet programs will be based primarily on student interest, rather than academic or aptitude

entrance requirements. The District will provide educational and social support programs to minority students to assure within-school integration and promote successful academic performance;

- x. addresses the issue of staff selection in light of school themes;

Transportation

- y. provides transportation to (1) all students who reside beyond the walk zone of their assigned school, as defined by state law, (2) students who desire to participate in extra-curricular activities, and (3) parents who need transportation to participate in such activities as teacher conferences and PTO meetings;

School Reform

- z. identifies, publicly acknowledges, and seeks to replicate schools over-chosen by all racial groups;
- aa. identifies, publicly lists, and provides technical assistance, and if necessary, changes personnel in under-chosen schools. The purpose of these actions are to upgrade and improve the quality of education received in under-chosen schools;

School Programs

- ab. insures that students identified as eligible or requiring Special Education or Bilingual services are assigned to a school providing such services. The Plan places equitable transportation burdens on students participating in Special Education or Bilingual programs; and
- ac. provides Chapter 1 funds to schools according to Chapter 1 guidelines. Chapter 1 funds should (unless prohibited by federal law) "follow the child" for low income students who change schools under this plan, and if a waiver is necessary for this purpose the District will seek one.

10. The Controlled Choice Plan will be implemented according to one of the following three timelines, subject to the recommendation of the consultant team:

- a. Implementation to the extent feasible and appropriate beginning with assignments for the 1998-99 school year; or
- b. Partial implementation with assignments for the 1998-99 school year with full implementation for the 1999-2000 school year; or

c. Full implementation for the 1999-2000 school year.

The consultant team will make a recommendation concerning the implementation schedule, and that recommendation shall also address how best to incorporate into the Controlled Choice Plan the elements of the District's November 1996 Redistricting Plan scheduled for Fall 1998. The consultant team and parties will give particular attention to the extent to which the one-way mandatory assignment system is eliminated at the elementary level, and what replaces it in the former receiving schools, including what measures (such as voluntary transfers) will be used to seek and promote racial diversity in those schools in grades not covered by Controlled Choice.

11. The Parties agree that community consultation will increase the likelihood of success of the Controlled Choice Plan. However, the process of community consultation shall only address the manner of implementation within the principles of equity and diversity contained in Paragraph 9.

12. As one element of this community consultation, a community based Controlled Choice Community Task Force shall be formed to assist in the development and implementation of the Controlled Choice Plan. The parties will insure that this Task Force is comprised to be representative of the District's racial, economic, civic, governmental, business and other major constituencies. Examples of issues which the Task Force may address are, magnet school themes; other school choice themes or structural approaches; processes for remediation of under-chosen schools, if any; and creating socio-economic equity guidelines. The Parties agree to negotiate the manner of selecting representatives to the Community Task Force.

13. The Parties agree that the use of consultants with expertise in developing and implementing Controlled Choice will benefit the District and the Plaintiff Class by improving the quality of the Plan and developing community involvement. The consultant team of Robert Peterkin and Michael Alves will participate equally in the development and implementation of the Controlled Choice Plan. The consultants' fees and expenses will be paid by the District, pursuant to negotiated agreements. If a replacement is needed for either consultant, the parties shall agree on the replacement.

14. The Controlled Choice Plan is intended as a long-term replacement for the current student assignment system. The Controlled Choice Plan will continue for a minimum of five years after the Plan is fully implemented in all grades, absent compelling circumstances. The Parties will periodically review the Controlled Choice Plan and other aspects of the District's student assignment system to insure that the system remains effective and equitable for African American students, to determine whether the Plan should be improved or tailored, and to coordinate the duration of the Plan.

15. To accomplish the objectives of this Agreement, the Parties agree to form a Planning and Implementation Committee comprised of an equal number of representatives of

each party, including counsel. The Committee will develop a clear process for the formulation and implementation of the Controlled Choice Plan based on trust, consensus, collaboration, and commitment. As the consultant team develops initial and final drafts of the Plan (or major components thereof), they will present those drafts to the Planning and Implementation Committee, maintain ongoing discussion with the Committee concerning development of the Plan (or that component), and obtain the consensus concurrence of the Committee before presenting to the Board a final recommended version of the Plan (or that component). Throughout the Plan's duration, the Planning and Implementation Committee will continue to monitor, evaluate, refine, and improve the Controlled Choice Plan.

16. Nothing in this Agreement shall supplant, diminish or abrogate the authority and powers of the Board of Education under Illinois law with respect to the matters addressed in this Agreement. Rather this Agreement constitutes an exercise of such powers.

17. The District will provide sufficient resources for the effective implementation of this Plan, from existing funding sources, new sources such as a Magnet Schools Assistance Grant, and/or from the Tort Immunity Fund.

18. The parties agree that:

- a. if student assignment remedial measures in the form of the Controlled Choice Plan can be formulated and executed without the need for litigation, there are substantial advantages for all parties in terms of the speed and potential effectiveness of the remedies and there is a significant and valuable possibility that there will be greater community support for the Plan, which will in turn contribute to the effectiveness of the Plan;
- b. the formulation and execution of the Plan will be much more effective if there is active and meaningful participation of the Plaintiff Class, the African American parents, students, and community of Champaign, and if the Plaintiff Class has the continuing assistance of the Futterman & Howard law firm, which has educational discrimination and desegregation experience, as well as experience in the implementation of controlled choice student assignment as a remedy for student assignment discrimination.

19. In the event that another individual, group or entity later claims that it and its counsel should be the class representative and the class counsel with respect to the issues encompassed in this Agreement for the class of African American students, and such claimant and its counsel are determined by a court of competent jurisdiction to be the class representative and class counsel in place of the named Plaintiffs and the Futterman & Howard firm, this Agreement shall terminate prospectively and all terms and conditions shall have no further force or effect.

Notwithstanding the foregoing provision, because Hispanic minority students comprise only about 2% of the District's enrollment, the parties have not initially included Hispanic minority students in the class of student beneficiaries under this Agreement. The parties have studied and will continue to study equity-related data and conditions for such students, and the parties anticipate that if such students become sufficiently numerous and other circumstances otherwise warrant, they will be added to the class of minority students represented by the Futterman & Howard firm, with an appropriate person or entity serving as the class representative. Neither the circumstances described in the preceding sentence, nor any other development with respect to the participation and representation of non-African American minority students in this Agreement or in the Champaign equity plan, shall constitute a termination event under the first sentence of Section 19.

20. In the event that objections or challenges are raised by any third party: (a) to the lawfulness or appropriateness of this settlement Agreement, or any provision within it, or (b) to any aspect of the implementation of this settlement Agreement, the District and Plaintiff Class shall jointly defend the lawfulness and appropriateness of the matter challenged. The District's counsel will take the lead role in doing so.

21. This Agreement shall be enforceable as between the District and Plaintiff Class by mediation and (if unsuccessful) by binding arbitration before a permanent arbitrator. The mediator and the permanent arbitrator will be mutually agreed upon by the Plaintiffs and the District. An arbitration award rendered under this Agreement shall be judicially enforceable. It is the intention of this Agreement that since the objectives and guidelines for the Controlled Choice Plan have been established by this Agreement and because this Agreement represents a collaborative consensus process, that there should be few occasions, if any, for disputes to reach the arbitration stage.

22. The duration of this Agreement shall be until five years after the Controlled Choice Plan is fully implemented in all grades, unless this Agreement is mutually extended.

23. The parties agree that if the Plaintiff Class initiated the litigation described in Paragraph 6 hereof concerning the student assignment issues summarized in Paragraphs 2-5, one of the principal remedies which Plaintiffs would seek would be the adoption and successful implementation of a controlled choice plan in the general form described in Paragraphs 8-14 and 17 of this Agreement. The parties also note that a liability finding on such student assignment claims could form part of the basis for educational equity remedies, in accordance with Milliken II, 433 U.S. 267 (1976).

In consideration of the District's entry into and successful good-faith compliance with this Agreement, Plaintiffs agree not to commence the litigation described in Paragraph 6 for the purpose of obtaining student assignment remedies on the matters which are governed by the Controlled Choice Plan, and agree instead to devote their good-faith efforts to the success of the agreed remedial process delineated herein. This forbearance is without prejudice to the

Plaintiffs' right to resort to such litigation if the District fails to carry out this Agreement successfully and in good faith.


Furthermore, this Agreement does not limit the right of the Plaintiff Class to assert in litigation the student assignment liability claims summarized in Paragraphs 2-5 hereof for the purpose of seeking to establish a basis for the claims described in Paragraph 24 of this Agreement, or for the purpose of seeking to obtain educational equity remedies in the nature of those authorized by Milliken II. In the event Plaintiffs commence such litigation, the District shall not be bound in such litigation by Paragraph 7 of this Agreement.]

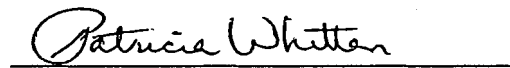
24. Plaintiffs assert that other student assignment and related issues remain, including but not limited to: the provision of sufficient school capacity in North Champaign, equity of facilities quality, equity of equipment and materials, equity of student transportation services, and equity of other existing voluntary or mandatory student assignment practices not addressed by this Agreement. The parties agree that those issues are not addressed by this Agreement, that the parties will further discuss these issues and seek agreed solutions through counsel, through the Planning and Implementation Committee, and through discussions with the consultant team; however, nothing in this Agreement shall prohibit Plaintiffs from addressing these issues through litigation.

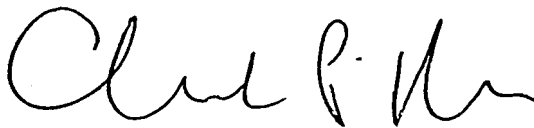
AGREED:

Champaign Community Unit
School District, No. 4, by


Don Nolen, Board President


Mike Cain, Superintendent

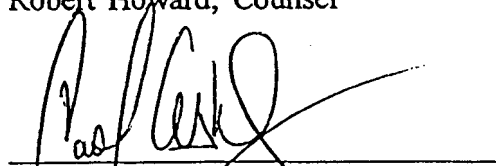

Patricia Whitten, Counsel


Charles Rose, Counsel

AGREED:

Jaray Davenport, a minor, by his parent and next friend, Mary Jane Moore; Katherine Gordon and Kalib Gordon, minors, by their parent and next friend, Martha Pettigrew; Baron Halbert and Eric Halbert, minors, by their parents and next friends, Lee and Sherrie Halbert; Alando Holt, a minor, by his parent and next friend, Patricia Holt; Khailil Terry, Damion Johnson, Darryl Kirk, Tyjuan Johnson, Sa'Da Johnson, minors, by their parent and next friend, Felicia Johnson; Antonio Newbern, a minor, by his parent and next friend, Annie Newbern; Allen Redding, a minor, by his parent and next friend, Siutanya Greer; Dextermetious Wardlow, a minor, by his parent and next friend, Sharon Wardlow; Dontrail Wright, a minor, by his parent and next friend, Mary Wright, as representatives of the settlement class of African American students, by their attorneys


Robert Howard, Counsel


Carol Ashley, Counsel

AGREED: This 16th day of September, 1997.